IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2990 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRESIDENT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2990 of 2004

MR SK PATEL for Petitioner No. 1

Mr. KD Pandya, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/08/2004

ORAL JUDGEMENT

Rule. Mr. KD Pandya, learned AGP waives service of Rule on behalf of the respondents.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner Cooperative Society has challenged the legality and validity of the order passed by the Secretary (Appeals) dated 29.12.2003 in

Revision Application No. 8/1998 in dismissing the same and confirming the order passed by the authorities below in forfeiting the land to the Government. The petitioner Cooperative Society was allotted/granted the land in question, more particularly land admeasuring approximately 200 sq.mtrs of land situate at Village Vadgam, Taluka-Dasada, District-Surendranagar. Necessary Sanad was also issued in favour of the petitioner and the Kabuliat was also executed by the petitioner Cooperative Society. It seems that the petitioner Cooperative Society has rented some portion of the property to the State Bank of India for the purpose of banking operations at a monthly rent of approximately Rs.1000 per month. It is the case of the petitioner that as the said portion of the said property was not utilised and in the interests of Cooperative Society the same was leased. There was no personal gain and/or any other intention on behalf of Cooperative Society.

3. Shri SK Patel, learned advocate appearing on behalf of the petitioner has submitted that even considering Condition No.6-A of the Kabuliat if there is any breach of the condition,meaning thereby if the property is transferred without prior permission of the State Government and/or competent authority, then also the Collector can pass an order continuing the possession of the petitioner on payment of penalty/fine. In that view of the matter, the petitioner is directed to approach the Collector, Surendranagar and request to give benefit of Condition No.6-A of the Kabuliat and also to continue the possession on payment of fine/penalty. The said application be made within a period of two weeks from today and on receipt of the same the Collector, Surendranagar is directed to decide and dispose of the same in accordance with Condition No.6 of the Kabuliat on merits keeping in view the fact that the petitioner is a cooperative Society who has rented the property in question to the State Bank of India for the benefit of the Village people. Such an exercise is required to be done by the Collector within a period of 12 weeks thereafter. If the Collector accepts the representation of the petitioner, then the orders which are passed against the petitioner which is impugned in the petition shall not be given effect to. Until such a decision is taken, the authorities are directed to maintain status-quo. Rule is made absolute with no order as to costs.

[M.R. Shah, J.]

rmr.